

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of:)	
)	
Valérie DE LA POTERIE)	Group Art Unit: 1619
)	
Application No. 10/821,919)	Examiner: Venkat, Jyothsna A.
)	
Filed: April 12, 2004)	Confirmation No. 2430
)	
For: COSMETIC COMPOSITION)	
HAVING A CERTAIN THERMAL)	<u>VIA EFS-WEB</u>
PROFILE)	

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

INFORMATION DISCLOSURE STATEMENT UNDER 37 C.F.R. § 1.97(b)

Pursuant to 37 C.F.R. §§ 1.56 and 1.97(b), Applicant brings to the attention of the Examiner the listed documents on the attached PTO SB/08 Form. This Information Disclosure Statement is being filed concurrently with the filing of a Request for Continued Examination in the above-referenced application

A copy of the Office Action and U.S. patent application listed are not enclosed as it is the undersigned's understanding that they are available on the Image File Wrapper on PAIR. See M.P.E.P. § 609.04(a).

The United States Court of Appeals for the Federal Circuit held in *Dayco Products, Inc. v. Total Containment, Inc.*, 329 F.3d 1358, 66 U.S.P.Q.2d 1801 (Fed. Cir. 2003) that an "adverse decision" by another examiner may meet the materiality standard under the amended Rule 56, and thus, Applicants should disclose prior

rejections of "substantially similar claim[s]" to the Office. Accordingly, although Applicant is not representing that the Office Action in the co-pending application and the U.S. patent application are material to the present application and is not admitting that any of the other claims are substantially similar, out of an abundance of caution, Applicant has listed a substantive office action from a co-pending application and a co-pending application on the attached form PTO-SB-08.

Applicant respectfully requests that the Examiner consider the listed documents and indicate that they were considered by making appropriate notations on the attached form.

This submission does not represent that a search has been made or that no better art exists, and does not constitute an admission that the listed documents are material or constitutes "prior art." If the Office applies the documents as prior art against any claim in the application and Applicant determines that the cited documents do not constitute "prior art" under United States law, Applicant reserves the right to present to the Office the relevant facts and law regarding the appropriate status of such documents.

Applicant further reserves the right to take appropriate action to establish the patentability of the disclosed invention over the listed documents, should the documents be applied against the claims of the present application.

If there is any fee due in connection with the filing of this Statement, please
charge the fee to our Deposit Account No. 06-0916.

Respectfully submitted,

FINNEGAN, HENDERSON, FARABOW,
GARRETT & DUNNER, L.L.P.

Dated: September 9, 2010

By: Kimberly D. Smith
Kimberly D. Smith
Reg. No. 63,219